



The Cherner Firm

January 10, 2025

BY ECF

Judge Philip M. Halpern  
United States District Court  
Southern District of New York  
300 Quarropas St.  
White Plains, NY 10601

Application denied. Defendants' opposition to plaintiff's sanctions motion shall be filed January 24, 2025, and reply shall be filed by February 7, 2025.

SO ORDERED.

Philip M. Halpern  
United States District Judge

Dated: White Plains, New York  
January 13, 2025

Re: Cherner v. CF Bankshares, Inc, et al. (24-cv-02812 (PMH))

Dear Judge Halpern:

I write with respect to counsel's letter dated January 9, 2025, in which counsel states that he is writing to clarify his December 26, 2024, letter; that "we anticipate that Plaintiff will file his motion for sanctions on or about January 19, 2025. Defendants will thereafter file their opposition to plaintiff's motion for sanctions within 14 calendar days of said filing, in accordance with Fed.R.Civ.P. 6 and Local Rule 6.1."

The time for filing was already addressed, as counsel sought a 1-week extension from me, which was granted (with a corresponding 1-week extension for reply papers), and then wrote to this Court on December 26, 2024, requesting those extensions, to January 9, 2025 and January 23, 2025, respectively. This court so ordered this request on December 27, 2024. Now, on the day that opposition papers were due, counsel writes to this Court that opposition papers will be filed no later than February 2, 2025. In addition to already receiving an extension, counsel now seeks to mis-read the rules in this regard.

Rule 11(c)(2) provides a safe harbor, for a Rule 11 motion, of 21 days from the date of service pursuant to Rule 5:

The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets.

Fed.R. Civ.P. 11(c)(2). The time for opposition and reply papers is determined by Local Rule 6.1(b):

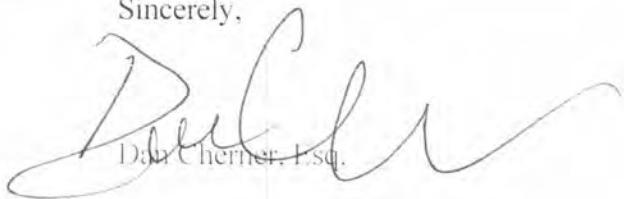
On all civil motions, petitions, and applications, other than those described in Rule 6.1(a), and other than petitions for writs of habeas corpus, (1) the moving papers must be served by the moving party on all other parties that have appeared in the action, (2) any opposing or response papers must be served **within 14 days after service** of the moving papers, and (3) any reply papers must be served within seven days after service of the answering papers. In computing periods of days, refer to Fed. R. Civ. P. 6.

Local Rule 6.1(b) (emphasis added). As there is no disagreement that the Rule 11 motion was served on counsel on December 19, 2024, this means that opposition papers would have been due January

2, 2025. Counsel addressed this by seeking and obtaining a 1-week extension to January 9, 2025. *Counsel now seeks to delay, on what seems to be a deliberate misinterpretation of the time for opposition, that it would run from the filing of the motion; in fact, the time runs from service, not filing, and counsel knew that was the case – hence the request for an extension.*

Over the course of the last 4 ½ months, counsel has wasted my time and this Court's time in bringing a motion to dismiss, and a subsequent motion to strike, and acting in bad faith in this regard, with no other purpose than to delay and multiply these proceedings. I ask that you find that the time to oppose the motion for sanctions has passed, and the motion is being made unopposed, or that you order counsel to file opposition papers no later than today, January 10, 2025.

Sincerely,



Dan Cherner, Esq.

cc: Brian Shenker (by ECF)